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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 United States of America,

10 Plaintiff,

11 vs.

12 Fernando Rivera-Aispuro,

13 Defendant/Movant.

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No. CV 14-0734-PHX-DGC (BSB)

CR 13-0149-PHX-DGC (JFM)

15 **ORDER**

16 Movant Fernando Rivera-Aispuro, who is confined in the Giles W. Dalby  
17 Correctional Facility in Post, Texas, has filed a *pro se* “Motion for Early Release  
18 Pursuant to Title 18 USC 3624.” The Court will deny the Motion.

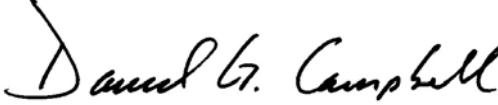
19 This matter has been opened as a motion to vacate sentence under 28 U.S.C.  
20 § 2255. However, Movant’s Motion does not refer to § 2255 except to say that his  
21 Motion is “not a civil post-conviction relief pleading.” Nor does he refer to any other  
22 jurisdictional basis for his Motion. Although the Court may construe a *pro se* motion as a  
23 § 2255 motion, it may not do so without first giving certain warnings to the movant. In  
24 *Castro v. United States*, 540 U.S. 375, 377 (2003), the Supreme Court held that a district  
25 court may not recharacterize a motion as a defendant’s first § 2255 motion without first  
26 warning him that the recharacterization will subject subsequent § 2255 motions to the  
27 law’s “second or successive” restrictions, and allowing him an opportunity to withdraw  
28 or to amend the motion. But even if the Court would provide Movant with the requisite

1      Castro warning, it would not recharacterize this matter as a motion brought under § 2255  
2 because his claim for relief is frivolous.

3      In his Motion, Movant seeks relief under a bill known as the Federal Bureau of  
4 Prisons Nonviolent Offender Relief Act of 2013, H.R. 62, 113th Cong. (2013-2014),  
5 which was introduced in Congress to amend 18 U.S.C. § 3624. However, that bill has  
6 not yet been enacted into law. Accordingly, Movant's Motion has no arguable basis in  
7 fact or in law.

8      **IT IS ORDERED** that Movant's "Motion for Early Release Pursuant to Title 18  
9 USC 3624" (Doc. 35 in CR 13-0149-PHX-DGC (JFM)) is **denied** and that the civil  
10 action opened in connection with this Motion (CV 14-0734-PHX-DGC (BSB)) is  
11 **dismissed**. The Clerk of Court must enter judgment accordingly.

12     Dated this 7th day of May, 2014.

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17     David G. Campbell  
18     United States District Judge